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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/614,255	07/03/2003	Mary Wilkes Eubanks		6006

7590  
Mary Wilkes Eubanks  
8 Pilton Place  
Durham, NC 27705

10/27/2009

EXAMINER
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ROBINSON, KEITH O NEAL

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1638

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10/27/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* MARY WILKES EUBANKS

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Application No. 10614,255  
Technology Center

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Mailed: October 27, 2009

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Before DELORES LOWE, *Review Team Paralegal*  
LOWE, *Review Team Paralegal*.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on October 20, 2009. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter requiring attention prior to docketing.

APPEAL BRIEF, CLAIMS APPENDIX

A review of the Appeal Brief filed January 21, 2009 reveals that claims 63 and 65 in the Claims appendix of the Appeal Brief are not consistent as amended in the last entered amendment filed on June 30, 2008. The copy of the claims should be in proper format and should not include any markings such as brackets or underlining except for claims in a reissue application in accordance with 37 CFR 41.37(c)(1)(viii). Furthermore, the Claims Appendix cannot assume entry of After Final Submissions for which an Advisory Action (or other Office communication) has not advised of entry. *See also Manual of Patent Examining Procedure (MPEP) § 1205.02* (8<sup>th</sup> ed. Rev. 6, Sept 2007) for details.

Specifically, claim 63, as provided in the Brief's Claims Appendix, reads: "A seed, pollen, all derivatives, subsequent generations, variants, mutants, modifications, and cellular components produced by the method plant of claim 62." Claim 65 reads "A maize according to claim 62 whereby said plant is drought tolerant."

However, in the last entered Amendment dated June 30, 2008, Claim 63, reads: "a send, pollen, all derivatives, subsequent generations, variants, mutants, modification, and cellular components produced by plant of claim 62." Claim 65 reads "a maize plant according to claim 62 whereby said plant is drought tolerant." Appropriate correction of all claims provided in the Claims Appendix in proper format is required.

Accordingly, it is ORDERED that the application is returned to the Examiner:

- 1) correction of the Claims Appendix of the Brief filed January 21, 2009;
- 2) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

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